

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

SEAN THOMSEN

Plaintiff,

vs.

R & L CARRIERS SHARED SERVICES,
LLC and R & L CARRIERS;

Defendants.

Case No. 1100-944

COMPLAINT,
JURY DEMAND and PRAECIPE

Assigned to Judge Lambert

COMES NOW the Plaintiff, by and through his attorney, and for his causes of
action against the Defendants states as follows:

1. This is an action seeking redress for the violation of the rights guaranteed
to the Plaintiff by the Nebraska Fair Employment Practices Act, the Americans with
Disabilities Act, as amended, the federal Family Medical Leave Act and Neb. Rev. Stat.
Section 20-148.

2. Jurisdiction of this Court is invoked pursuant to the Nebraska statutes
referenced herein, namely, the Nebraska Fair Employment Practices Act and Neb. Rev.
Stat. Section 20-148. This Court also has jurisdiction over the claims brought pursuant to
federal law.

3. Plaintiff filed complaints of discrimination with the Nebraska Equal
Opportunity Commission and the United States Equal Opportunity Commission with
respect to the allegations set forth herein as well as other allegations. The NEOC found
reasonable cause to believe that the Defendants discriminated against the Plaintiff. The
plaintiff has filed this timely action within 90 days of receipt of the right to sue notice.

4. At all times relevant, the Plaintiff was a resident of the State of Iowa.

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ISSUED

5. At all times relevant, the Defendant R & L Carriers Shared Services, LLC was a limited liability corporation licensed to do business and was conducting business in the State of Nebraska. Upon information and belief, Defendant R & L Carriers was a business operating Omaha, Nebraska at all times alleged herein. Upon information and belief, the aforementioned defendants are employers as that term is defined by the state and federal laws referenced herein.

6. Plaintiff Sean Thomsen is a qualified person with a disability as that term is defined by the Americans with Disabilities Act and the Nebraska Fair Employment Practices Act as he: (1) has a physical and mental impairment(s) that substantially limits one or more of major life activities; and/or (2) he has a record and/or history of such an impairment and/or (3) the defendants perceived or regarded him as having such an impairment. Plaintiff Sean Thomsen was able to perform the essential functions of the positions he sought with the Defendants.

7. Since approximately 2004 through August, 2007, Plaintiff had been employed with the Defendants as a driver. Plaintiff's work performance was satisfactory.

8. In the late Spring and early Summer of 2007, Plaintiff applied for and was granted leave under the federal Family Medical Leave by the Defendants. On August 21, 2007, the day after his Family Medical Leave had expired, Defendants terminated Plaintiff's employment.

9. Plaintiff was released to full duty work on October 1, 2007. In late September or early October, 2007, Plaintiff applied for a vacant driver position with the Defendants. Plaintiff was qualified for the position he sought with the defendants. Plaintiff's application for employment was rejected by the Defendants.

10. In March, 2008, Plaintiff again applied for a driver position with the Defendants. Notwithstanding Plaintiff's qualifications for the position, his application was again rejected by the Defendants.

11. The Defendants unlawfully discriminated against the Plaintiff and/or retaliated against the Plaintiff when they rejected his applications for employment. A motivating factor in the Defendants' decision to reject the Plaintiff's applications for employment was the Plaintiff's disability (as defined by the ADA and NFEPA) and/or in retaliation for the Plaintiff applying for and/or utilizing leave under the federal Family Medical Leave Act. Defendants' termination of the Plaintiff was a willful violation of the federal Family Medical Leave Act as they fired him one day after Plaintiff's leave expired and refused to hire him for employment after August, 2007 notwithstanding his qualifications.

12. The aforementioned illegal activity occurred while the managers, supervisors and/or owners were acting in the scope and course of their employment with the Defendants. All discriminatory and retaliatory acts alleged herein occurred within the State of Nebraska.

13. At all time relevant, Defendants were aware of its duty and obligations under the aforementioned statutes. The Defendants' conduct was willful and/or in reckless disregard to the Plaintiff's statutory rights. Punitive and/or liquidated and/or double or treble damages are appropriate.

COUNT I

Plaintiff incorporates paragraphs 1 through 14 as if fully set forth herein.

14. Defendants' rejections of Plaintiff's employment applications were discriminatory in nature and in violation of the Nebraska Fair Employment Practices Act, Neb. Rev. Stat. Section 20-148 and the Americans with Disabilities Act, as amended.

15. As a direct, proximate result of Defendants' aforementioned illegal conduct, Plaintiff has suffered compensatory damages, lost wages, loss of future income and loss of fringe benefits, the total sum of which will be specifically pleaded when ascertained.

16. Defendants' actions were done willfully and/or with malice and/or in reckless disregard to the federally protected rights of the Plaintiff. Punitive and/or liquidated and/or double or treble damages are appropriate.

COUNT II

Plaintiff incorporates paragraphs 1 through 16 as if fully set forth herein.

17. After Plaintiff engaged in the protected activity of applying for and/or utilizing leave under the federal Family Medical Leave Act, Defendants willfully retaliated against the Plaintiff by terminating his employment and/or rejecting his subsequent applications for employment with the Defendants. The aforementioned willful retaliatory conduct is violative of the federal Family Medical Leave Act and Neb. Rev. Stat. Section 20-148.

18. As a direct, proximate result of Defendants' aforementioned illegal conduct, Plaintiff has sustained compensatory damages, lost wages, the value of benefits and will continue to incur future lost wages and job related benefits.

19. Defendants' actions were done willfully and/or with malice and/or with reckless indifference to the statutorily protected rights of Sean Thomsen. Punitive and/or liquidated and/or treble damages are appropriate.

WHEREFORE, Plaintiffs respectfully requests that this Court assume jurisdiction herein as to all counts alleged herein and grant the following relief:

- a. Declare the conduct of the Defendants to be violative of the rights of the Plaintiff under the appropriate federal or state law or laws;
- b. Direct the Defendants to reinstate and/or instate Plaintiff to his previously held position and/or position(s) for which he applied with back pay, all the job related benefits and job related increments to which he is entitled, including interest thereon, or to find that reinstatement or instatement is not appropriate and to award him front pay according to law;
- c. Award the Plaintiff compensatory damages for pain, suffering, inconvenience, humiliation and emotional distress in an amount to be determined by the jury or the court;
- d. Award the Plaintiff punitive and/or liquidated and/or double or treble damages against the Defendants in an amount to be determined by the jury or the Court for the federal causes of action;
- e. Enjoin the Defendants from any further discrimination or retaliation against the Plaintiff;
- f. Award the Plaintiff costs and reasonable attorney's fees and such other and further relief as the Court deems just and reasonable and appropriate to correct the wrong done to him.

FOR: SEAN THOMSEN

BY: 

VINCENT M. POWERS & ASSOCIATES

Kathleen M. Neary 20212
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Lincoln, NE 68508
(402) 474-8000
Kathleen@vpowerslaw.com

DEMAND FOR JURY TRIAL

Plaintiff requests a jury trial in Omaha, Nebraska.


PRAECIPE

TO THE CLERK OF SAID COURT:

Please issue summons for service upon Defendant R&L Carriers Shared Services, LLC
via certified mail, return receipt requested.

CT Corporation Systems
Registered agent for R&L Carriers Shared Services, LLC
1024 K Street
Lincoln, NE 68508

Please return the summons to the undersigned for service upon Defendant R&L Carriers
Shared Services, LLC.


Kathleen M. Neary 20212

mailed 10/26
ISSUED